

Serial No.: 10/777,802

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REMARKS

Claims 1-26 are pending in the application. Restriction is required to the following allegedly unrelated inventions:

I. Claims drawn to a medical article comprising a release region, in turn comprising: (a) a polymeric carrier comprising a first polymer and (b) drug loaded nanoparticles dispersed within said polymeric carrier, said drug loaded nanoparticles comprising a layered silicate material and a first therapeutic agent, classified in class 424, subclass 423.

According to the Office Action, claims 1-4 and 17-25 are drawn to such medical articles.

However, the subject matter of Group I actually corresponds to claims 1-24. More particularly, the limitations listed in the above Group I are all found in claim 1, and are thus present in claims 2-24 depending from claim 1. With respect to claim 25, this claim is not drawn to a medical article at all, but rather is drawn to a method of releasing a therapeutic agent to a patient, and thus does not fall within the subject matter of Group I.

II. Claims drawn to a medical article comprising a first and second polymer, classified in class 424, subclass 423.

According to the Office Action, claims 1, 5-10 and 17-25 are drawn to such medical articles.

However, the subject matter of Group I actually corresponds only to claims 5-10. Claims 1 and 17-24, on the other hand, do not have a claim limitation requiring first and second polymers and thus do not fall within the Examiner's description of the subject matter of Group II. Claim 25 is drawn to a method of releasing a therapeutic agent to a patient and thus do not fall within the Examiner's description of the subject matter of Group II. Thus claims 1 and 17-25 do not fall within the Examiner's description of the subject matter of Group II.

III. Claims drawn to a medical article comprising a release region, in turn comprising a polymeric carrier comprising a first therapeutic agent, classified in class 424, subclass 423.

According to the Office Action, claims 1, 11, and 17-25 are drawn to such medical articles.

Applicant agrees that claim 11, contains the limitations listed in the above Group III. However, claims 1 and 17-24 do not have a claim limitation of a polymeric carrier comprising a first therapeutic agent, and claim 25 is drawn to a method of releasing a therapeutic agent to a patient. Thus claims 1 and 17-25 do not fall within the Examiner's description of the subject matter of Group III.

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IV. Claims drawn to a medical article comprising a first and second therapeutic agent, classified in class 424, subclass 423.

According to the Office Action, claims 1 and 12-25 are drawn to such medical articles. However, the subject matter of Group IV actually corresponds to only claims 12-16. Claims 1 and 17-24, while requiring a first therapeutic agent, do not require a second therapeutic agent, and claim 25 is drawn to a method of releasing a therapeutic agent to a patient. Thus claims 1 and 17-25 do not fall within the Examiner's description of the subject matter of Group IV.

V. Claim 26, drawn to a method of providing a medical article, classified in class 424, subclass 423.

Applicants hereby elect the subject matter of Group I, which as noted above corresponds to claims 1-24, with traverse.

The election is made with traverse, because the Examiner's requirement of restriction between Groups I-V is improper. The Examiner argues that the inventions of Groups I-V are unrelated, and references MPEP 802.01 and 806.06, the latter of which states (emphasis added):

Inventions as claimed are independent [i.e., unrelated—*see* MPEP 802.01] if there is no disclosed relationship between the inventions, that is, they are *unconnected* in design, operation, and effect. If it can be shown that two or more inventions are independent, *and if there would be a serious burden on the examiner if restriction is not required*, applicant should be required to restrict the claims presented to one of such independent inventions. For example:

(A) Two different combinations, not disclosed as capable of use together, having different modes of operation, different functions *and* different effects are independent. *An article of apparel and a locomotive bearing would be an example.* A process of painting a house and a process of boring a well would be a second example.

Here, the inventions of Groups I-IV are related (i.e., clearly connected in design, operation and/or effect), because they are all directed to medical articles or methods of providing the same. For an example of *unrelated* inventions see MPEP 806.06 (e.g., an article of apparel and a locomotive bearing). In fact, the inventions of Groups I-IV are related as genus (Group I) and species (Groups II-IV). Furthermore, the inventions of Groups I-V are all classified in the same class/subclass (424/423), which not only underscores the fact that the inventions are related but also indicates that there would be no serious burden on the Examiner if the restriction were not required.

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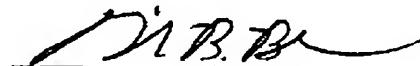
Species elections are also required pursuant to 35 U.S.C. 121 in view of the above election of Group I. Applicant hereby elects the following:

- Hydrophilic agent and hydrophobic first polymer.
- The vasculature.
- Smectite.

Claims 1-3, 5-19, 20, 21-23, 24 (several of the clays listed are smectite clays) and 25 read on the elected species.

Should the Examiner be of the view that an interview would expedite consideration of the application, request is made that the Examiner telephone the Applicants' attorney at (703) 433-0510 in order that any outstanding issues be resolved.

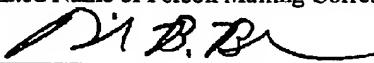
Respectfully submitted,



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I hereby certify that this correspondence is being deposited with the United States Patent and Trademark Office on March 12, 2007 via facsimile to: 571-273-8300.

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(Signature)